

ORIGINAL
RECEIVED

MAY 18 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
OF Counsel

William H. BuRoss, III
Matthew L. Leibowitz

Shainis & Beltzman

Counselors at Law

Suite 200

2000 I Street, N.W.

Washington, D.C. 20036

(202) 416-1633

Fax (202) 416-1823

Aaron P. Shainis
Lee J. Beltzman

May 18, 1995

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Re: Channel 49
Osage Beach, Missouri

Dear Mr. Caton:

Transmitted herewith, on behalf of Timothy D. Lischwe, are an original and five (5) copies of his Petition for Reconsideration.

Should any questions arise concerning this matter, kindly communicate with the undersigned.

Sincerely yours,



Aaron P. Shainis

Counsel for

TIMOTHY D. LISCHWE

Enclosure

RECEIVED

MAY 18 1995

**Before The
FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.606(b)) MM DOCKET NO.
TV Table of Allotments) RM-
(Osage Beach, Missouri))

DOCKET FILE COPY ORIGINAL

To: Chief, Allocations Branch
Policy & Rules Division
Mass Media Bureau

PETITION FOR RECONSIDERATION

Timothy D. Lischwe ("Lischwe"), by his attorney, respectfully requests reconsideration of the Commission's letter of April 27, 1995, returning as unacceptable for consideration Lischwe's request for rule making. In support, the following is respectfully submitted.

Background

1. On January 31, 1995, Lischwe filed a Petition for Rule Making with the Commission requesting that Section 73.606(b) of the Commission's rules and regulations be amended to allocate Channel 49 to Osage Beach, Missouri. As part of that Petition for Rule Making, Lischwe requested a waiver of the requirements of the freeze order placed on facilities within 75 miles of the top-30 television markets. See Advanced Television Systems, Mimeo No. 4074, released July 17, 1987. The "freeze" was imposed because the high densities of existing television stations in those markets limited the spectrum available for advanced television ("ATV") service there and the Commission wanted to preserve its spectrum allocation options for such ATV use. Lischwe pointed out, in his Petition for Rule Making that the proposed allocation falls within the required distance to both the St. Louis, Missouri, market as well as the Kansas

City, Missouri, market. Thus, the proposed allotment would preclude operation on Channel 49 in both St. Louis and Kansas City. However, as the Engineering Statement associated with the Petition for Rule Making indicated, neither market would be able to support an ATV operation on Channel 49 due to existing preclusion from other nearby markets. In this regard, operation on Channel 49 from the St. Louis market is already precluded due to the operation of WCFN(TV), a co-channel facility, in Springfield, Illinois. With regard to the Kansas City market, operation in that area is precluded by KTKA(TV), a co-channel facility, at Topeka, Kansas. Thus, as the Engineering Statement points out, operation on Channel 49 in Kansas City, Missouri, is precluded by the Topeka station.

2. In the rule making petition, Lischwe contended that since the proposed allocation is located a greater distance from the St. Louis reference location than WCFN(TV) and is located a greater distance from the Kansas City reference location than KTKA(TV), these existing facilities will have a far greater impact on Channel 49 in St. Louis and Kansas City than the proposed allocation would. More importantly, however, predicated on the Commission's holding in Radner Broadcasting Company, Inc., DA 89-1369, for Channel 19 at Nacogdoches, Texas, a waiver of the freeze is warranted in this case.

3. By letter dated April 27, 1995, the Commission stated, in essence, that a waiver is not proper because waivers are limited to noncommercial channels and to licensees which provide "compelling" reasons why the freeze should not apply to their particular situation or class of station. In this regard, the Commission stated, "In this case, Timothy Lischwe's request falls within neither exception since it is not an existing licensee seeking a change in its facilities nor does it concern noncommercial educational television broadcasting."

Argument

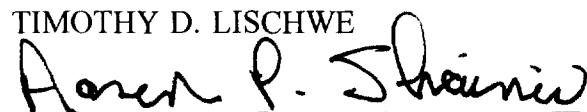
4. As previously stated, the rule making cited the holding in Radner Broadcasting Company, Inc.^{1/} The Radner case is directly on point. In this regard, Radner was a new commercial television station seeking Commission approval to operate on Channel 19, Nacogdoches, Texas. The Commission granted a waiver predicated on the fact that the operation of the station in Nacogdoches would have no preclusion affects on the use of Channel 19 in Houston, since the co-channel station, KVCT(TV) in Victoria, Texas, located 109.8 miles from Houston already precludes the advance television use of Channel 19 there. The Commission, in determining that the request to allocate Channel 19 to Osage Beach, Missouri, was unacceptable, did not address the Radner Broadcasting Company, Inc., precedent. Clearly, the Commission has an obligation to explain why the Radner holding does not apply to the instant situation.

Accordingly, it is respectfully submitted that reconsideration in light of the Radner holding is imperative. Moreover, it is submitted that predicated on the Radner precedent, a waiver is warranted.

Respectfully submitted,

TIMOTHY D. LISCHWE

By:



Aaron P. Shainis
His Attorney

SHAINIS & PELTZMAN
2000 L Street, N. W. - #200
Washington, D. C. 20036
202/416-1633

May 18, 1995

C:\1995\APS\FCC\OSAGE.REC

^{1/} A copy of the Radner case was attached to the rule making.

CERTIFICATE OF SERVICE

I, Linda E. Skiles, Office Administrator, of the law firm of Shainis & Peltzman, do hereby certify that copies of the foregoing document were sent, via First Class Mail, this 18th day of May, 1995, to the office of the following:

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N. W. - Room 8322
Washington, D. C. 20554



Linda E. Skiles